

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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RODNEY SMITH, LEON WILSON, BRENDAN VILELLA, ERIC JOHNSON, MARQUAILAS GRAY, JOSEPH ANDERSON, SHERWIN ALVAREZ, DWAYNE PATTERSON, ANIBEL PEREZ COLON, JEFFREY CORIOLAN, DEVON BROWN, TEDDY SPANN, DAQUAN BROWN, TYSHAWN KENNEDY, MICHAEL ROCK, DESHAWN PAIGE, TAHEEM PRATT, ZANTWON TUCKER, NATOINE MARSHALL, ISIAH FOSTER, STEVEN MITCHELL AND FERNANDO BELL

PLAINTIFFS

**FIRST AMENDED**  
**COMPLAINT**

15-CV-3859 (PKC) (CLP)

- Against -

CAPTAIN DIAZ, CAPTAIN RAYMOND SANCHEZ, CAPTAIN KAMONA McDONALD, C.O. TIMOTHY HODGES, C.O. SHANE STERLING, C.O. ALEXIS CALHOUN, C.O. KEVIN JONES, C.O. BRANDON GREEN, C.O. LAURIE MESTRE, C.O. JORGE CORDERO, C.O. PATRICK DARIUS, C.O. PETER OTHMAN, C.O. DAMON WAITHE, C.O. ROSCOE NEELY, C.O. LAWRENCE McARDLE, C.O. OSWALD HYPPOLITE, C.O. JERMAINE DILL, C.O. JASON FERNANDEZ, C.O. KEOSHA MAYNARD, C.O. STEVE HYPPOLITE, C.O. LORA GREEN, C.O. ELVIN McLAUCHLIN, C.O. SEAN MEDINA, C.O. MATTHEW HALYARD, C.O. BRIAN REES, C.O. KENNY IP, C.O. WILSON DELOSSANTOS, C.O. KELVIN RUSH, C.O. AARON MURPHY, ROBERT FRASER

DEFENDANTS

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Plaintiffs Rodney Smith (“Smith”), Leon Wilson (“Wilson”), Brendan Vilella (“Vilella”), Eric Johnson (“Johnson”), Marquailas Gray (“Gray”), Joseph Anderson (“Anderson”), Sherwin

Alvarez (“Alvarez”), Dwayne Patterson (“Patterson”), Anibel Perez Colon (“Colon”), Jeffrey Coriolan (“Coriolan”), Devon Brown (“Brown”), Teddy Span (“Spann”), Daquan Brown (“Daquan”), Tyshawn Kennedy (“Kennedy”), Michael Rock (“Rock”), Deshawn Page (“Page”), Taheem Pratt (“Pratt”), Zantwon Tucker (“Tucker”), Natoine Marshall (“Marshall”), and Fernando Bell (“Bell”), (collectively, “plaintiffs”) by their attorneys, Raoul Zaltzberg, Esq. and Robert Marinelli, Esq., complaining of the defendants, respectfully allege as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs bring this action for compensatory damages, punitive damages and attorney’s fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violations of their civil rights, as said rights are secured by said statutes and the Constitutions of the State of New York and the United States.
2. The claim arises from an incident occurring on February 16, 2015, in which officers, captains, and other employees of the New York City Department of Corrections (“DOC”) acting under the color of state law subjected plaintiff to, among other things: excessive force, deliberate indifference to safety and/or medical needs and failure to protect.

**JURISDICTION & VENUE**

3. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988, and the Fourth and Fourteenth Amendments to the United States Constitution.
4. Jurisdiction is founded upon 28 U.S.C. §§ 1331, 1343, and 1367.
5. The amount in controversy exceeds \$75,000.00 excluding interest and cost.
6. Venue is properly laid in the Eastern District of New York under 28 U.S.C. § 1391(b), in that this is the District in which the claim arose.

**JURY DEMAND**

7. Plaintiffs respectfully demand a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

**PARTIES**

8. Plaintiffs are citizens of the United States and at all times here relevant resided in the City and State of New York. They were detainees at the time of the incidents, in the custody of the DOC.
9. The City of New York is a municipal corporation organized under the law of the State of New York.
10. At all times relevant hereto, the following Captains worked for the Department of the New York City Department of Correction, acting in their capacity of agent, servant, and employee of defendant City, within the scope of his employment as such, acting under the color of state law.
  - a. Captain Diaz, Shield No. 128;
  - b. Captain Raymond Sanchez, Shield No. 1186;
  - c. Captain Kamona McDonald, Shield No. 1381
11. At all times relevant hereto, the following C.O.'s were employees of DOC, acting in the capacity of agent, servant, and employee of defendant City, within the scope of their employment as such, acting under the color of state law.
  - a. Correction Officer Timothy Hodges, Shield No. 17238;
  - b. Correction Officer Shane Sterling, Shield No. 2483;
  - c. Correction Officer Alexis Calhoun, Shield No. 9702;
  - d. Correction Officer Kevin Jones, Shield No. 17263;
  - e. Correction Officer Brandon Green, Shield No. 7507;
  - f. Correction Officer Laurie Mestre, Shield No. 18491;

- g. Correction Officer Jorge Cordero, Shield No. 13329;
- h. Correction Officer Patrick Darius, Shield No. 14311;
- i. Correction Officer Peter Othman, Shield No. 18683;
- j. Correction Officer Damon Waithe, Shield No. 18956;
- k. Correction Officer Roscoe Neely, Shield No. 18933;
- l. Correction Officer Lawrence McArdle, Shield No. 17893;
- m. Correction Officer Oswald Hyppolite, Shield No. 18919;
- n. Correction Officer Jermaine Dill, Shield No. 10060;
- o. Correction Officer Jason Fernandez, Shield No. 1470;
- p. Correction Officer Keosha Maynard, Shield No. 17254;
- q. Correction Officer Steve Hyppolite, Shield No. 18876;
- r. Correction Officer Lora Green, Shield No. 4831;
- s. Correction Officer Elvin McLauchlin, Shield No. 10602;
- t. Correction Officer Sean Medina, Shield No. 8672;
- u. Correction Officer Matthew Halyard, Shield No. 5845;
- v. Correction Officer Brian Rees, Shield No. 17004;
- w. Correction Officer Kenny Ip, Shield No. 16059; and
- x. Correction Officer Wilson Delossantos, Shield No. 15508;
- y. Correction Officer Kelvin Rush, Shield No. 17075;
- z. Correction Officer Aaron Murphy, Shield No. 15724.

12. Defendants are sued in their individual capacities.

13. At all times hereinafter mentioned the defendants were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City of New York.

### **FACTS**

14. At the time of the events complained of, plaintiffs were inmate at the Otis Bantum Correctional Center (“OBCC”), a detention center at Rikers Island operated by the New York City Department of Corrections (“DOC”).
15. On or about February 12, 2015 the individual cells at OBCC’s 5-west cell area were kept unlocked twenty-four hours a day.
16. Inmates housed in this area had free reign to enter and leave their cells.
17. On February 16, 2015 certain guards assigned to OBCC 5-west learned of this issue.
18. On February 16, 2015 at approximately 5:00 p.m., defendants threatened plaintiffs with retaliation and herded plaintiffs into a “gym” area within OBCC.
19. Plaintiffs, as well as other inmates housed in OBCC 5-west, were corralled into a gym area.
20. Plaintiffs were left in the gym for several hours without food, water or the ability to use the rest rooms.
21. The windows in the gym were closed and the air conditioners were left on causing numerous plaintiffs to complain about being cold and uncomfortable. Numerous plaintiffs coughed, sneezed and exhibited indications of illness.
22. At approximately 8:00 p.m. the defendants wearing gas masks, came storming into the gym in full riot gear carrying canisters of MK-9 Pepper Spray (“MK-9”) and closing the gym doors behind them.
23. The defendants, beginning with C. O. Sterling, attacked the plaintiffs and indiscriminately sprayed MK-9 at the plaintiffs.

24. Each Plaintiff was subjected to excessive force as enumerated below.

**Excessive Force used against Plaintiff Rodney Smith**

25. Rodney Smith, while standing near the bleachers in the gym, was thrown to the ground by defendants. One of the defendants then dropped down onto his upper back with his knee and flex cuffed him. This caused Smith's mouth to violently hit into the gym floor.

26. As a result Smith sustained a 2-3 inch in diameter bump on his neck, a cut to his mouth and Smith urinated in his pants.

27. As Smith was bleeding from his mouth another defendant kicked him.

28. Smith was pulled up violently by his cuffs and slammed into the gym wall causing a tooth to chip.

29. Smith was taken to the intake area where he was strip searched and placed in an intake cell. Hours later he was placed back into his cell.

30. Smith suffered swelling, bruising, cuts, to his face and back and a chipped tooth. He also suffered pain, redness, swelling, and blurred vision from the MK-9 being sprayed into his eyes and had difficulty and pain breathing.

**Excessive Force used against Plaintiff Leon Wilson**

31. Wilson was inside the gym when defendants came in and engulfed the area with MK-9 pepper spray causing Wilson pain in his eyes and severe coughing. Wilson was then struck by defendants.

32. Wilson fell to the ground and was zip-tied by the defendants.

33. Wilson was then dragged across the gym. As he was taken out of the gym at least two defendants was once again struck.

34. As a result he suffered bruising and swelling to his face, head, shoulder, arms and legs. He also suffered pain, redness, swelling, and blurred vision from the MK-9.

35. Wilson was then taken to the intake area, strip searched, and placed in an intake cell. Hours later he was placed back into his cell.

**Excessive Force used against Brendan Vilella**

36. Brendon Vilella was outside of the gym door near the mailroom talking to Captain Diaz and other defendants when defendants came into the gym.

37. He was instructed by Captain Diaz to stand facing the gym wall. He was then flex cuffed by other defendants and brought inside the closed gym doors.

38. Vilella was instructed to stay facing the wall. As he came into contact with the MK-9 (MK-9) he began coughing. He was then punched in the right side of the face by a defendant for not facing the wall.

39. Vilella was then sprayed directly in the face, eyes, nose and mouth by a defendant with MK-9.

40. Vilella was then kicked in the side and back of his left leg several times and punched repeatedly after he fell to the ground.

41. He was then pulled up by his cuffs, slammed against the wall and told by at least one defendant: "To face the fucking wall or we will fuck you up."

42. Vilella was escorted out of the gym and placed in the intake area.

43. Vilella was strip searched and placed in an intake cell. Hours later he was placed back into his cell. He was denied water and medical treatment throughout that time.

44. Vilella suffered swelling, bruising, cuts, a swollen leg, numbness in his right wrist and a ringing in his right ear. He also suffered pain, redness, and blurred vision from the MK-9 being sprayed into his eyes and had difficulty and pain breathing.

45. Vilella was treated and it was later determined that it was medically necessary for him to use a hearing aid to correct the damage sustained to his ears.

**Excessive Force used against Eric Johnson**

46. Eric Johnson was near the bleachers when the defendants came into the gym.
47. The defendants instructed him to get on the ground. Before he could do so he was sprayed directly in the eye, nose and mouth by a defendant holding a canister of MK-9 from a distance of less than 2-3 feet.
48. The impact of the chemical spray caused him to fall to the floor.
49. While on the floor, Johnson was repeatedly kicked, punched and struck by multiple defendants.
50. He was then kneed in the back and zip-tied.
51. Johnson was picked up by at least one defendant and slammed into the gym wall backward causing pain to his back.
52. He was taken to the intake area.
53. Johnson was strip searched and placed in an intake cell. Hours later he was placed back in his cell.
54. Johnson suffered swelling, bruising, and pain to his head and back. He also suffered pain, redness, swelling, and blurred vision from the MK-9.

**Excessive Force used against Marquailes Gray**

55. Gray was in the gym when the defendants, including C.O. Rush and C.O. Ip came into the gym.
56. The defendants, including C.O. Rush and C.O. Ip, instructed him to get on the ground. Before he could do so he was sprayed directly in the eye, nose and mouth by a defendant holding a canister of MK-9 from a distance of less than 2-3 feet.
57. The impact of the chemical spray caused him to fall to the floor.

58. While on the floor, Gray was repeatedly kicked, punched and struck by multiple defendants, including C.O. Rush and C.O. Ip.

59. Gray was kneed in the back and zip-tied. He was then taken to the intake area.

60. Gray was strip searched and placed in an intake cell. Hours later he was taken to his cell.

61. Gray suffered swelling, bruising, and pain to his face, back and head. He also suffered pain, redness, swelling, and blurred vision from the MK-9 being sprayed into his eyes and had difficulty and pain breathing.

**Excessive Force used against Joseph Anderson**

62. Joseph Anderson was near the rear of the gym when the defendants entered.

63. The defendants instructed him to get on the ground. Before he could do so he was sprayed directly in the eye, nose and mouth by with MK-9. He asked them to stop and repeatedly screamed "I have asthma. I can't breathe." His pleas were ignored.

64. The impact of the chemical spray caused him to fall down onto the floor.

65. Defendants repeatedly struck Anderson causing him to defecate.

66. Anderson, due to his size and past medical condition has a front cuff only order.

67. Despite the order, he was zip-tied from the rear. This caused his wrists to swell and his skin to tear in areas. Anderson's pleas were again ignored.

68. Anderson was then taken to the intake area.

69. Anderson was strip searched and placed in an intake cell. Hours later he was placed back into his cell.

70. Anderson suffered swelling, bruising, and pain to his face, and body. Anderson was urinating blood after this incident.

71. Anderson suffered pain, redness, swelling, and blurred vision from the MK-9 and had difficulty and pain breathing.

72. He continues to have issues with his breathing since the incident.

**Excessive Force used against Sherwin Alvarez**

73. Sherwin Alvarez was sitting on the bleachers when defendants, including C.O. Rush and C.O. Ip, entered the gym.

74. The defendants, including C.O. Rush and C.O. Ip instructed him to get on the ground. He complied.

75. Alvarez was sprayed directly in the eye, nose and mouth with MK-9.

76. Alvarez was picked up by his waist-band and dropped down face first onto the next set of bleachers and then zip-tied.

77. Alvarez was then lifted up and placed against the gym wall.

78. Alvarez attempted to wipe his tearing eyes against his shoulder when his head was shoved into the wall by a defendant who shouted: "I told you to face the fucking wall."

79. Alvarez felt pain and dizziness as a result of the impact.

80. Alvarez was taken to the intake area where he was strip searched and placed in an intake cell. Hours later he was placed back into his cell.

81. Alvarez suffered swelling, bruising, and pain to head. He also suffered pain, redness, swelling, and blurred vision from the MK-9.

**Excessive Force used against Dwayne Patterson**

82. Dwayne Patterson was in the middle of the gym when the defendants entered.

83. The defendants instructed him to get on the ground. Before he could do so, a defendant punched him in the mouth. This caused Patterson to fall to the ground. He also began bleeding and lost a tooth.

84. As he was on the ground he was repeatedly struck by defendants. At some point he tried to crawl away from the beating and his pants came loose. A defendant holding a canister of MK-9 then sprayed him directly in his buttocks and testicles.

85. He was zip-tied and taken to the intake area.

86. Patterson was strip searched and placed in an intake cell. Hours later he was placed back into his cell.

87. Patterson suffered swelling, and pain to his head as well as pain to his testicles and anus. He also suffered pain, redness, swelling, and blurred vision from the MK-9 being sprayed into his eyes and had difficulty and pain breathing.

**Excessive Force used against Anibel Perez Colon**

88. Colon was near the bleachers when the defendants entered. Defendants instructed Colon to get on the ground. He was then sprayed directly in the eye, nose and mouth with MK-9.

89. The impact of the chemical spray caused him to fall to the floor.

90. While on the floor, Perez Colon was repeatedly kicked, punched and struck by multiple defendants.

91. He was then kneed in the back and zip-tied.

92. Colon was then picked up and pushed face first into the gym wall.

93. He was then taken to the intake area.

94. Colon was strip searched and placed in an intake cell. Hours later he was placed back into his cell.

95. Colon suffered swelling, bruising, and pain to his face, back as well as a chipped front tooth. He also suffered pain, redness, swelling, and blurred vision from the MK-9 being sprayed into his eyes and had difficulty and pain breathing.

**Excessive Force used against Jeffrey Coriolan**

96. Jeffrey Coriolan was sitting in the bleachers when defendants entered the gym.

97. The defendants grabbed Coriolan from the bleachers and attempted to pull him to the floor.

98. As he was being pulled, his right foot and ankle got caught in the bleachers. As a result, he suffered pain, swelling and bruising to his right ankle.

99. Once on the ground, defendants struck him about the hands, arms, legs, face and body. In addition, at least one defendant stepped on his hand and another defendant stomped on his injured ankle.

100. Coriolan was then zip-tied.

101. Coriolan was taken to the intake area. He was strip searched and placed in a cell. Hours later he was placed back in his own cell. Coriolan suffered swelling, bruising, and pain to his face, wrist, hand, legs and right ankle. He also suffered pain, redness, swelling, twitching in his and blurred vision from the MK-9 and had difficulty and pain breathing.

#### **Excessive Force used against Devon Brown**

102. Brown was near the rear of the gym when the defendants came into the gym.

103. The defendants instructed him to get on the ground. Before he was able, defendants sprayed MK-9 directly in his face. He asked them to stop and repeatedly screamed "I have asthma. I can't breathe."

104. The impact of the chemical spray caused him to fall onto the floor.

105. Brown was repeatedly struck by defendants.

106. He was kneed in the back and zip-tied. Brown was then taken to the intake area.

107. Brown was then strip searched and placed in an intake cell. Hours later he was placed back into his cell.

108. Brown suffered swelling, bruising, and pain to his lower back. He also suffered pain, redness, swelling, difficulty breathing and blurred vision from the MK-9.

109. He has continued to have issues with his breathing since the incident.

**Excessive Force used against Teddy Spann**

110. Spann was in the gym when the defendants entered.

111. Spann was thrown to the ground and sprayed directly in the eye, nose and mouth with MK-9.

112. While on the floor, Spann was repeatedly kicked, punched and struck in the back and legs by multiple defendants.

113. He was then zip-tied excessively tightly, causing injuries to Spann's wrist.

114. Spann was then lifted by the defendants and slammed into the gym wall.

115. He was then towards the intake area. As he was descending the stairs, he was pushed by the defendants and fell down the stairs.

116. Spann was then strip searched and placed in an intake cell. Hours later he was placed back into his cell.

117. Spann suffered injuries to his back, leg, head and wrist. He also suffered pain, redness, swelling, and blurred vision from the MK-9 being sprayed into his eyes and had difficulty and pain breathing.

**Excessive Force used against Daquan Brown**

118. Daquan was in the gym when the defendants entered.

119. Defendants ordered Daquan to get to the ground. Before he was able, he was sprayed directly in the eye, nose and mouth with MK-9.

120. The impact of the MK-9 caused Daquan to fall to the floor.

121. He was then zip-tied, picked up, and thrown into the gym wall causing injuries to the inside of his mouth.

122. He was then taken to the intake area.

123. Daquan was strip searched and placed in an intake cell. Hours later he was placed back into his cell.

124. Daquan suffered swelling, bruising and pain to his head and body and inner mouth. He also suffered pain, redness, swelling, and blurred vision from the MK-9.

**Excessive Force used against Tyshawn Kennedy**

125. Kennedy was sitting in the bleachers when the defendants came into the gym.

126. The defendants instructed Kennedy to get on the ground. Defendants grabbed Kennedy by the arms and body and threw him down.

127. Kennedy was dragged onto the gym floor and repeatedly struck by the defendants. He was then zip-tied.

128. While zip-tied he was sprayed directly in the eye, nose and mouth with MK-9.

129. Kennedy was taken to the intake area where he was strip searched and placed in an intake cells. Hours later he was placed back into his cell.

130. Kennedy suffered swelling, bruising, and pain to his head lost a tooth. He also suffered pain, redness, swelling, and blurred vision from the MK-9 being sprayed into his eyes and had difficulty and pain breathing.

**Excessive Force used against Michael Rock**

131. Michael Rock was near the bleachers when the defendants came into the gym.

132. The defendants instructed him to get on the ground. Before he could do so he was sprayed directly in the eye, nose and mouth by a defendant holding a canister of MK-9 from a distance of less than 2-3 feet.

133. The impact of the chemical spray caused him to immediately fall to the floor.

134. While on the floor, Rock was repeatedly struck by multiple defendants.

135. He was then kneed in the back and zip-tied.

136. Rock was picked up by at least one defendant and pushed face first into the bleachers causing injuries in his mouth and his lip to swell.

137. He was then taken to the intake area.

138. Rock was strip searched and placed in a cell. Hours later he was placed back into his cell.

139. Rock suffered swelling, bruising, and pain to his face, back, lip and his mouth. He also suffered pain, redness, swelling, and blurred vision from the MK-9.

**Excessive Force used against Deshawn Paige**

140. Deshawn Paige was near the rear of the gym when defendants entered.

141. The defendants instructed him to get on the ground. Before he could do so he was sprayed directly in the eye, nose and mouth with MK-9.

142. The impact of the chemical spray caused him to immediately fall to the ground. He was repeatedly kicked, punched and struck by the defendants.

143. Paige was kicked and, as a result, briefly lost consciousness and urinated on himself.

144. He was zip-tied and picked up by at least one defendant and thrown into the gym wall.

145. He was then taken to the intake area.

146. Paige was strip searched and placed in an intake cells. Hours later, he was placed back into his cell.

147. Paige suffered swelling, bruising, and pain to his head and shoulder. He also suffered pain, redness, swelling, and blurred vision from the MK-9 being sprayed into his eyes and had difficulty and pain breathing.

**Excessive Force used against Taheem Pratt**

148. Taheem Pratt was in the gym when defendants came in.

149. Pratt was dragged to the ground by the defendants.

150. Pratt was dragged to the ground where he was punched, kicked and struck on the back, head and arms.

151. Pratt was then zip-tied. While he was on the ground, he was sprayed in the eyes, nose and mouth with MK-9.

152. Pratt was then taken to intake, strip searched, and placed in an intake cell. Hours later he was placed back into his cell.

153. Pratt suffered swelling, bruising, and pain to his face, back and wrist. He also suffered pain, redness, swelling, and blurred vision from the MK-9 being sprayed into his eyes and had difficulty and pain breathing.

**Excessive Force used against Zantwon Tucker**

154. Tucker was right outside the gym when defendants entered.

155. Tucker was sprayed in the face, eyes, nose and mouth with MK-9.

156. Tucker was thrown against a wall and struck by the defendants.

157. As a result, a gash was opened on Tucker's head.

158. Tucker was zip-tied. As he was on the ground he was again sprayed in the eyes, nose and mouth with MK-9.

159. Tucker was taken to the intake-area, strip searched, and placed in a cell. Hours later he was placed back into his own cell.

160. Later that evening, Tucker was taken for medical treatment. Stitches were required to close his wound.

**Excessive Force used against Natoine Marshall**

161. Marshall was near the middle of the gym when defendants entered.

162. Marshall was sprayed directly in the face, eyes, nose and mouth by Captain Sanchez with MK-9.

163. Three to four defendants, including Captain Sanchez and C.O. Mestre threw Marshall to the ground. As they zip-tied him, his arm was twisted to the point that his shoulder popped out of its socket. He screamed for them to stop.

164. Marshall was picked up by his zip-tied hands and dragged to the gym wall. The defendants, including Captain Sanchez and C.O. Mestre slammed Marshall head first into the wall causing injury above his left eye.

165. Marshall was then taken to intake. He was strip searched and placed in an intake cell. Hours later he was placed back into his cell.

166. Marshall suffered injury to his shoulder, swelling, bruising, and a cut to his left eye. He also suffered pain, redness, swelling, and blurred vision and difficulty and pain breathing.

**Excessive Force used against Isaiah Foster**

167. Foster was in the gym when defendants entered.

168. Foster was dragged to the ground and sprayed repeatedly in the eyes, nose and mouth with MK-9.

169. While on the ground he was struck on the back, head and arms.

170. Foster was then zip-tied and taken to the intake area.

171. Foster was then strip searched and placed in an intake cell. Hours later he was placed back into his cell.

172. Foster suffered swelling, bruising, and pain to his face, back and wrist. He also suffered pain, redness, swelling, and blurred vision from the MK-9 being sprayed into his eyes and had difficulty and pain breathing.

**Excessive Force used against Steven Mitchell**

173. Mitchell was inside the gym when defendants entered.

174. Mitchell was dragged to the ground and repeatedly punched, kicked and struck by the defendants.

175. He was also sprayed directly in the face by chemical spray.

176. Mitchell was zip-tied and taken to the intake area.

177. Mitchell was strip searched and placed in an intake cell. Hours later Mitchell was placed back into his cell.

178. Mitchell suffered swelling, bruising, and pain to his mouth, head, and ribs. He also suffered pain, redness, swelling, and blurred vision from the MK-9 and had difficulty and pain breathing

**Excessive Force used against Fernando Bell**

179. Bell was sitting in the bleachers when the defendants entered the gym.

180. The defendants instructed him to get on the ground. Before he could, he was sprayed directly in the eye, nose and mouth with MK-9.

181. The impact of the chemical spray caused him to fall onto the bleachers.

182. While in the bleachers, Bell was dragged to the gym floor. He was repeatedly struck by those defendants.

183. He was zip-tied; and then picked up and thrown head first gym wall causing a lump to his forehead.

184. He was then taken to the intake area.

185. Bell was then strip searched and placed in an intake cell. Hours later he was placed back into his cell.

186. Bell suffered swelling, bruising, and pain to his head and body. He also suffered pain, redness, swelling, and blurred vision from the MK-9 spray.

**Immediately After the Incident**

187. The defendants brought the plaintiffs into the intake area at OBCC, strip searched them, and placed into crowded intake cells. The plaintiffs were cuffed and left in the cells for over two hours. Then they were brought back to their cells.

188. All plaintiffs were denied water. Numerous plaintiffs resorted to using toilet water in attempt to get the chemical pepper spray out of their eyes.

**FIRST CLAIM FOR RELIEF**

**DEPRIVATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. § 1983**

189. Plaintiffs repeat and reallege each and every allegation set forth herein.

190. All of the aforementioned acts of defendants, their agents, servants, and employees, were carried out under the color of state law.

191. All of the aforementioned acts deprived plaintiffs of the rights privileges, and immunities guaranteed to citizens of the United States by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America and are in violation of 42 U.S.C. § 1983.

192. The aforementioned individual defendants in their capacities as employees of DOC carried out the acts complained of, with all of the actual and/or apparent authority attendant thereto.

193. The acts complained of were carried out by the aforementioned individual defendants in their capacities as employees of the DOC pursuant to the customs, usages, practices, procedures, and the rules of the City of New York and the DOC, all under the supervision of ranking officers of said department.

194. Defendants, Collectively and individually, while acting under the color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the

respective municipality/authority, which is forbidden by the Constitution of the United States.

**SECOND CLAIM FOR RELIEF**

**EXCESSIVE FORCE UNDER 42 U.S.C. § 1983**

195. Plaintiffs repeat and reallege each and every allegation set forth herein.

196. The conduct and actions of defendants acting under color of law and under their authority as New York City police officers was done intentionally, maliciously, with a deliberate indifference and/or with a reckless disregard for the natural and probable consequences of their acts, was done without lawful justification, and was designed to and did cause specific serious bodily harm, pain and suffering in violation of the plaintiff's Constitutional rights as guaranteed under 42 U.S.C. § 1983 and the Fourth, Eighth and Fourteenth Amendments to the United States Constitution

197. As a result of defendant's unlawful actions, plaintiffs suffered physical injuries, as well as severe emotional distress, humiliation, and deprivation of their constitutional rights.

**THIRD CLAIM FOR RELIEF**

**DELIBERATE INDIFFERENCE TO SAFETY/MEDICAL NEEDS**

198. Plaintiffs repeat and reallege each and every allegation set forth herein.

199. The individual defendants were aware of a risk to the plaintiffs' safety and a need for medical care and failed to act in deliberate indifference to both the plaintiffs needs.

200. Accordingly, defendants violated the fourteenth amendment because they acted with deliberate indifference to plaintiffs' medical needs and safety.

201. As a direct and proximate result of this unlawful conduct, plaintiffs sustained the damages alleged herein.

**FOURTH CLAIM**

**FAILURE TO INTERVENE**

202. Plaintiffs repeat and reallege each and every allegation as if fully set forth herein.

203. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

204. As a direct and proximate result of this unlawful conduct, Plaintiffs sustained the damages hereinbefore alleged.

**WHEREFORE**, plaintiffs respectfully request judgment against defendants as follows:

- I. Compensatory damages against all defendants, jointly and severally;
- II. Punitive damages against the individual defendants, jointly and severally;
- III. Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and
- IV. Such other and further relief as this Court deems just and proper.

DATED: February 11, 2018  
New York, New York

/s

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